

Exhibit A

4854 EISENHOWER AVENUE, APT. 447 ♦ ALEXANDRIA, VIRGINIA 22304
(703) 829-7432 ♦ DPARDO@MSPBWATCHIL.NET

October 21, 2012

Assistant Administrator for Finance and Management (AFN-1)
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

FOIA APPEAL

Dear Sir or Madam:

Pursuant to 49 C.F.R. § 7.21(c), I write to appeal the Federal Aviation Administration's (FAA) October 10, 2012 initial determination of my Freedom of Information Act (FOIA) request. As described below, the FAA withheld and overlooked responsive documents because it appears that it conducted an inadequate search.

Background

FOIA Request No. 2012-6972, dated July 27, 2012, asked for the following relevant items:

I request all documents pertaining to a May 14, 2010 Request for Interpretation from Mr. Keith Stamper of COMAIR Inc. Documents, including emails, should be in the possession of individuals within AGC and AFS that include Dale E. Roberts, AFS-220, Richard Clarke, AFS-200, Anne Bechdolt, AGC-220, and Jodi L. Baker, AFS-200, though there may be others. Please limit the search to June 10, 2010 to July 14, 2010.

I also request the attachment to an email sent by Yvette Armstead, AGC-30, to Cynthia Wheeler, Quentin Barrett, and Scott Cooper on September 16, 2010 at 8:52am. The subject line is 'probationary template.'

On August 17, I received from Leslie H. Smith, Manager, Air Transportation Division (ATD), a fee estimate of \$200 for 2 hours of free search and 4 hours of additional searching, at \$50 per hour. I agreed to pay this amount.

On August 27, I received a response from Rebecca MacPherson, Assistant Chief Counsel for International, Legislation, and Regulations, Office of Chief Counsel (AGC),

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for documents in its possession that are responsive to Request No. 2012-6972 (plus an unrelated request). Ms. MacPherson's response noted that

Enclosed are copies of all documents relevant to your request. Your request was also forwarded to two other FAA offices to search for information on items one and two [the items listed above]. They will respond to you directly.

AGC's FOIA documents contained several emails sent to or from individuals assigned to Flight Standards Service (AFS), such as the employees named in my request. In addition, documents in my possession from an earlier FOIA request were generated by, or sent to, AFS employees.

On August 31, I received another fee estimate from Mr. Smith for an additional hour of search, at \$50, because AFS exhausted the six search hours agreed to. I agreed to pay this amount as well.

On October 10, I received from John M. Allen, Director, Flight Standards Service, an initial determination of my request. Mr. Allen's response noted that

A records search was conducted in the Air Transportation Division's computer database systems. We were able to locate a correspondence letter between the Office of Chief Counsel and Mr. Keith Stamper dated September 13, 2010.¹ This letter is in response to Mr. Stamper's request for a legal interpretation of '24 consecutive hours' as used in the rest provisions of Title 14 Code of Federal Regulations section 121.471(d). We were unable to locate any email records from Richard Clarke, Jodi Baker, and Dale Roberts from June 10, 2012 [sic] to July 14, 2010.

Discussion

The FAA withheld and overlooked responsive documents because it appears that it conducted an inadequate search.

An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was "reasonably calculated to uncover all relevant documents." Valencia-Lucena v. U.S. Coast Guard, 180 F.3d 325, 326 (D.C. Cir. 1999) (citations omitted). "The agency must show that it made a good faith effort to conduct a

¹ The September 13, 2010 letter is an Interpretation Letter by the Office of Chief Counsel that was coordinated with AFS. It is available to the public through an AGC database, at http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/interpretations/data/interps/2010/Stamper.pdf.

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search for the requested records, using methods which can be reasonably expected to produce the information requested." Id. at 326 (citation omitted). The agency "cannot limit its search to only one or more places if there are additional sources that are likely to turn up the information requested." Id. (internal quotations and citations omitted).

An agency demonstrates beyond material doubt to a court that it conducted a reasonable search by submitting a reasonably detailed affidavit that sets forth the search terms and type of searches performed, averring that "all files likely to contain responsive materials (if such records exist) were searched." See id. (citations omitted). However, if a review of the agency's search activity raises substantial doubt, particularly in view of "well defined requests and positive indications of overlooked materials," the agency may be ordered to conduct further searches. See id.

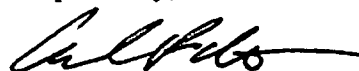
Here, there seem to be positive indications of overlooked materials. A simple search for the terms "Stamper," "121.471," or "Pardo" in the inboxes of AFS employees Dale Roberts, Jodi Baker, and Richard Clarke, for instance, for the approximately month-long period in question, would have yielded any number of a dozen or more responsive emails and attachments. This is corroborated by FOIA documents I have already obtained from non-AFS offices.

Additionally, the overlooked documents likely would have provided information about other locations reasonably calculated to uncover all relevant documents. According to a June 10, 2010 email by Richard Clarke, the Stamper Request was coordinated and tracked in AFS' systems. Accordingly, a search of AFS' or ATD's tracking system or case file for the Stamper Request would have yielded responsive documents. Such documents likely include a non-concurrence memo that was signed off by Dale Roberts, Richard Clarke, and John Duncan, Manager, ATD. This memo was also referenced in a June 30, 2010 email by Jodi Baker.

In light of the indicia above, I reiterate my request for **all documents** pertaining to the Stamper Request, including communications between and among AFS/ATD employees who processed or coordinated, or would have processed or coordinated, this request. If such emails or other documents are not available, a reasonable search would involve any appropriate backup tapes or files.

Finally, I have not received any documents or even a determination from any FAA office pertaining to my request for the "probationary template" attachment. I seek this document as well.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Pardo', with a stylized flourish at the end.

David Pardo

- Case 1:13-cv-00014-CMH-JFA Document 1-1 Filed 01/04/13 Page 5 of 13 PageID# 12



David Pardo <dpardo220@gmail.com>

Request under the Freedom of Information Act, 5 U.S.C. 552

dpardo220@gmail.com <dpardo220@gmail.com>

Fri, Jul 27, 2012 at 8:36 PM

To: 7-awa-arc-foia@faa.gov

Cc: dpardo220@gmail.com

4854 Eisenhower Avenue
Unit 447
Alexandria, VA 22304

July 27, 2012

Federal Aviation Administration
National Freedom of Information Act Staff, ARC-40
800 Independence Avenue, SW
Washington, DC 20591

Dear FOIA Coordinator:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents (or documents containing the following information) be provided to me:

I request all documents pertaining to a May 14, 2010 Request for Interpretation from Mr. Keith Stamper of COMAIR Inc. Documents, including emails, should be in the possession of individuals within AGC and AFS that include Dale E. Roberts, AFS-220, Richard Clarke, AFS-220, Anne Bechdolt, AGC-220, and Jodi L. Baker, AFS-200, though there may be others. Please limit the search to June 10, 2010 to July 14, 2010.

I also request the attachment to an email sent by Yvette Armstead, AGC-30, to Cynthia Wheeler, Quentin Barrett, and Scott Cooper on September 16, 2010 at 8:52am. The subject line is "probationary template."

I request any and all emails between Anne Bechdolt, AGC-220, and Laura Montgomery, AGC-240, between April 28, 2010 and May 16, 2010.

In order to determine my status to assess fees, you should know that my fee category is: an individual seeking records for personal use and not for profit.

The maximum dollar amount I am willing to pay for this request is \$200. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

[Quoted text hidden]



U.S. Department
of Transportation
Federal Aviation
Administration

800 Independence Ave., SW.,
Washington, DC 20591

AUG 17 2012

Mr. David Pardo
Senior Attorney
4854 Eisenhower Avenue, Apt 447
Alexandria, VA 22304

Dear Mr. Pardo

Re: Freedom of Information Act (FOIA) request 2012-6972

This letter is in response to your July 27, 2012, Freedom of Information Act (FOIA) request for a copy of all records pertaining to a May 14, 2010 request for interpretation from COMAIR Inc., including emails from those individuals named in your request from June 10-July 14, 2010; for a copy of the attachment to the September 16, 2010 email from the named individual pertaining to "probationary template", and all emails between the two individuals from April 28-May16, 2010.

We have estimated the charges for search, review and/or duplication for the requested records to be \$200.00. This estimate is based on the following:

- 2 hours of free search (per FAA Order 1270.1) and		
- *4 hours of additional searching	x \$ 50.00	= \$ 200.00
Total		= \$ 200.00

* 1 Aviation Safety Inspector researching records at 4 hours x Pay Band J

If you are not willing to pay the estimated fee, please confirm in writing within 20 days of receipt of this letter that your original request is being withdrawn, or contact the undersigned by calling 202-267-8166 for assistance in reformulating your request to avoid some of these estimated charges. If we have not received a letter or a phone call from you within 20 business days, from the date you signed for this letter, we will consider this request withdrawn.

Sincerely,

Leslie H. Smith
Manager, Air Transportation Division



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

AUG 27 2012

Mr. David Pardo
4854 Eisenhower Avenue, Apt. 447
Alexandria, VA 22304

Freedom of Information Act (FOIA) Request 2012-6972 and 2012-6973

Dear Mr. Pardo:

This letter responds to your Freedom of Information Act (FOIA) 2012-6972 and 2012-6973, both dated July 27, 2012. Your request was assigned to the Office of the Chief Counsel, Regulations Division for processing.

Your first request (2012-6972) sought copies of:

- 1) All documents pertaining to a May 13, 2010 Request for Interpretation from Mr. Keith Stamper of COMAIR, Inc. You requested that the search be limited to June 10, 2010 to July 14, 2010, and noted that relevant e-mails would likely be to or from Dale Roberts, Richard Clarke, Anne Bechdolt and Jodi Baker, although there could be others.
- 2) An attachment to a September 16, 2010 e-mail from Yvette Armstead to Cynthia Wheeler, Quentin Barrett and Scott Cooper with the subject line "probationary template", and
- 3) All e-mails between Anne Bechdolt and Laura Montgomery between April 28, 2010 and May 16, 2010.

An electronic search was conducted of Ms. Bechdolt's e-mail during the dates specified in your request to determine whether the FAA has any records responsive to items one and three listed above. This search would reveal all e-mails sent to or from Ms. Bechdolt. Additionally, an electronic search was conducted of Rebecca MacPherson's e-mail during the dates specified as Ms. MacPherson was Ms. Bechdolt's supervisor at the time. Finally, a physical search was conducted of Ms. Bechdolt's files. Enclosed are copies of all documents relevant to your request. Your request was also forwarded to two other FAA offices to search for information on items one and two. They will respond to you directly.

Your second request (2012-6973) sought a copy of a letter sent by Mr. Keith Barton around May 17, 2010 possibly regarding a complaint that the FAA's Office of Chief Counsel was tardy or unresponsive to a request. You noted that the likely recipient or subject of the letter was Anne Bechdolt. A physical search was conducted of Ms. Bechdolt's files as she was the attorney assigned to the legal interpretation in question. A physical search was also conducted of the Regulations Division's reading file, and an electronic search was conducted of Ms. MacPherson's e-mail to determine whether the letter was submitted electronically. We found no records responsive to your request. If you owe fees for the processing of this request, an invoice containing the amount due and payment instructions will be enclosed.

The undersigned is responsible for the no records determination for 2012- 6973. Should you consider this no records response a denial of your request, you may request reconsideration of this determination by writing to the Assistant Administrator for Finance and Management (AFN-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington DC, 20591. Your request must be made in writing within 30 days from the date of receipt of this letter and must include all information and arguments relied upon. Your letter must also state that it is an appeal from the above-described denial of a request made under the FOIA. The envelope containing the appeal should be marked "FOIA."

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca MacPherson", with a long horizontal flourish extending to the right.

Rebecca MacPherson
Assistant Chief Counsel for
International, Legislation and Regulations



U.S. Department
of Transportation
Federal Aviation
Administration

800 Independence Ave., SW.,
Washington, DC 20591

AUG 31 2012

Mr. David Pardo
4854 Eisenhower Avenue, Apt 447
Alexandria, VA 22304

Dear Mr. Pardo:

Re: Freedom of Information Act (FOIA) request 2012-6972

This letter is in response to your July 27, 2012, Freedom of Information Act (FOIA) request for a copy of all records pertaining to a May 14, 2010 request for interpretation from Comair Inc., including emails from those individuals named in your request from June 10-July 14, 2010; for a copy of the attachment to the September 16, 2010 email from the named individual pertaining to "probationary template", and all emails between the two individuals from April 28-May16, 2010.

We have exhausted the search hours up to \$200 you have agreed to pay. In order to continue our search for records you are requesting, we will require one more hour of searching, which will require an additional \$50, for a total of \$250. If you do not want us to continue the search, we can send you what we have found so far. Please let us know what you would like us to do.

We have estimated the charges for search, review and/or duplication for the requested records to be \$250.00. This estimate is based on the following:

- 2 hours of free search (per FAA Order 1270.1) and		
- *5 hours of additional searching	x \$ 50.00	= \$ 250.00
Total		= \$ 250.00

* 1 Aviation Safety Inspector researching records at 5 hours x Pay Band J

If you are not willing to pay the estimated fee, please confirm in writing within 20 days of receipt of this letter that your original request is being withdrawn, or contact the undersigned by calling 202-267-8166 for assistance in reformulating your request to avoid some of these estimated charges. If we have not received a letter or a phone call from you within 20 business days, from the date you signed for this letter, we will consider this request withdrawn.

Sincerely,

Leslie H. Smith
Manager, Air Transportation Division



U.S. Department
of Transportation
**Federal Aviation
Administration**

OCT 10 2012

Mr. David Pardo
4854 Eisenhower Avenue, Apt 447
Alexandria, VA 22304

Dear Mr. Pardo:

Re: Freedom of Information Act (FOIA) request 2012-6972

This is in response to your July 27 FOIA request for a copy of all records pertaining to a May 14, 2010 request for interpretation from Comair Inc., including emails from those individuals named in your request from June 10-July 14, 2010; for a copy of the attachment to the September 16, 2010 email from the named individual pertaining to "probationary template", and all emails between the two individuals from April 28-May16, 2010. We apologize for the delay in responding.

A records search was conducted in the Air Transportation Division's computer database systems. We were able to locate a correspondence letter between the Office of Chief Counsel and Mr. Keith Stamper dated September 13, 2010. This letter is in response to Mr. Stamper's request for a legal interpretation of "24 consecutive hours" as used in the rest provisions of Title 14 Code of Federal Regulations section 121.471(d). We were unable to locate any email records from Richard Clarke, Jodi Baker, and Dale Roberts from June 10, 2012 to July 14, 2010.

If you owe any fees for the processing of this request, an invoice containing the amount due and payment instructions will be enclosed.

The undersigned is/are responsible for the partial no records determination that the Flight Standards Service has partial no records responsive to your request. Should you consider this partial no records response a denial of your request, you may request reconsideration of this determination by writing to the Assistant Administrator for Finance and Management (AFN-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC, 20591. Your request must be made in writing within 30 days from the date of receipt of this letter and must include all information and arguments relied upon. Your letter must also state that it is an appeal from the above-described denial of a request made under the FOIA. The envelope containing the appeal should be marked "FOIA".

Sincerely,

John M. Allen
Director, Flight Standards Service

Enclosure



U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

SEP 13 2010

Mr. Keith Stamper
Chief Pilot/Regulatory Compliance
COMAIR, Inc.
77 Comair Blvd.
Erlanger, KY 41018

Dear Mr. Stamper,

This letter is in response to your request for a legal interpretation submitted on May 14, 2010 regarding the definition of "24 consecutive hours" as used in the rest provisions of 14 C.F.R. §121.471(d). Specifically, you asked whether "24 consecutive hours" may span across two different calendar days or is limited to a single calendar day.

Section 121.471(d) states that "[e]ach certificate holder conducting domestic operations shall relieve each flight crewmember engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive days." The FAA has consistently interpreted the term "24 consecutive hours" as not being limited to a calendar day. Depending on the particular factual situation, the 24-consecutive hour rest period could begin on one calendar day and end on the next calendar day. *See* Legal Interpretation to James W. Johnson from Rebecca B. MacPherson, Assistant Chief Counsel of Regulations (July 25, 2005); *see also* Legal Interpretation to John C. Lenahan from Edward P. Faberman, Acting Assistant Chief Counsel of Regulations and Enforcement (November 7, 1979).

Without additional information regarding the pilot's actual flight time over the course of the 7-consecutive day period, we are unable to determine for certain whether your example would comply with the requirements of §121.471. However, it may be feasible for a pilot to be released from all obligations to the company from 1500 hours on Wednesday to 1500 hours on Thursday and satisfy the rest requirements of §121.471(d).

This response was prepared by Anne Bechdolt, Acting Manager of the Operations Law branch in the Regulations Division of the Office of the Chief Counsel, and was coordinated

with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca B. MacPherson". The signature is fluid and cursive, with a large initial "R" and "M".

Rebecca B. MacPherson
Assistant Chief Counsel, Regulations Division